



Montana Environmental Trust
Group, LLC Trustee of the Montana
Environmental Custodial Trust PO Box 1230,
East Helena, Montana 59635
Telephone: (406) 227-1242

**ENVIRONMENTAL
PROTECTION AGENCY**

MAY 18 2011

May 17, 2011

MONTANA OFFICE

CERTIFIED MAIL 7009 0820 0000 6612 1301
RETURN RECEIPT REQUESTED

Betsy Burns
RCRA Project Officer
EPA Region VIII
Montana Office
10 West 15th St., Suite 3200
Helena, MT 59626

RE: Consent Decree Civil Action No. CV 98-3-H-CCL East Helena Site
Work Performed in April 2011; Progress Report

Dear Betsy:

On May 5, 1998, ASARCO and the United States Environmental Protection Agency (EPA) entered into a Consent Decree (the Decree) to further the objectives of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). On December 9, 2009, the Montana Environmental Custodial Trust (the Custodial Trust) was established as part of the larger ASARCO bankruptcy settlement agreement to provide operational, remediation and revitalization activities at the Montana Sites, which include the East Helena Smelter. The United States and the State of Montana are the two designated beneficiaries of the Custodial Trust.

Pursuant to the Settlement Agreement, a motion to reopen the Decree and substitute the Custodial Trust for ASARCO was granted by the US Federal District Court in January 2010. As of the date of this report, EPA, DOJ and the Custodial Trust are in the process of finalizing a First Modification to the Decree that will conform to the

terms of the Settlement Agreement. The Custodial Trust submits this progress report under the Decree subject to and pending the finalization of the First Modification to the Decree. Nothing herein, or in the substitution, should be interpreted or construed to constitute an unqualified acceptance of the terms of the Decree by the Custodial Trust or a waiver or release of its right to a modification of the Decree consistent with the Settlement Agreement. The Custodial Trust reserves all rights to object to those parts of the Decree that it reasonably believes are inconsistent with the Settlement Agreement. As with this report, future progress reports prescribed by the Decree, as so amended, will be submitted to EPA by the Custodial Trust.

Section XII of the Decree (Reporting: Corrective Action) requires submittal of certified monthly progress reports to EPA to describe the actions taken to achieve compliance with the Decree. The following describes those activities that have occurred or are related to activities that took place during April 2011. As to any actions performed by ASARCO, the Custodial Trust's predecessor-in-interest, the descriptions are based on information and belief only.

SECTION 1. DESCRIPTION OF ACTIVITIES FOR APRIL 2011

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Draft Phase II RFI	Hydrometrics / GSI	GSI is preparing the draft report, which was to be provided to METG in draft form on April 25, 2011. A partial preliminary review draft was delivered to METG on April 27, 2011. A revised complete draft will be submitted to EPA on or before May 20, 2011.	No data submittal	Database problems were encountered, budget and schedule issues	90%
Field Sampling Event (FSAP)	Hydrometrics	Comprehensive groundwater and surface water monitoring for 1 st quarter 2011. 128 monitoring wells were sampled for field parameters and hazardous constituents as detailed in the FSAP. 191 monitoring and residential wells were monitored for water levels. Synoptic stream gauging on Prickly Pear Creek includes flow measurements at 22 sites and surface water quality sampling at 12 sites. 2 nd quarter fieldwork will be completed in May.	Water Quality samples submitted to Energy Labs in Helena, MT	Drilling	80%
Selenium Plume Front Investigation	Hydrometrics	Six (6) new monitoring wells were installed to better define the leading edge of the off-site selenium plume (wells 140-143 and 211-212). Wells have been sampled for water quality and soil chemistry.	Water Quality samples submitted to Energy Labs in Helena, MT and a limited number of soil samples were submitted Applied Speciation in Bothell, WA	Drilling problems with first contractor Boland. Environmental West completed installation of the wells	100%
Baseline Ecological Risk Assessment (BERA)	Gradient	Gradient is preparing a response to comments and report revision table for beneficiary review in May.	No data submittal	No problems encountered	75%
Consent Decree Modification	METG/DOJ	Modification #1 to the 1998 CD is under discussion between EPA and MDOJ/MDEQ.	No data submittal	No problems encountered	80%

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
Groundwater Technical Working Group (TWG) – Groundwater Model Work Plan	METG/EPA/MDEQ/MDOJ	Groundwater Technical Group kick-off meeting on April 7 th for development of the GW Model Work Plan. The TWG includes Burns, Breeden, Voss, Ford, Stimson, Mullen, Metish, and GSI. The group meeting included a discussion of the GW model parameters and the ongoing selenium investigation.	Groundwater Flow and Fate and Transport Model Work Plan is due May 13, 2011.	April 27 th meeting rescheduled for May 25 th	0%
Corrective Action Management Unit (CAMU)	CH2M-Hill	CH2M-Hill performance evaluation of CAMU 1. Technical inspection and report at least every five years as required in the EPA-approved post closure plan for CAMU 1. Historical data collected during site visit the week of April 4 th . CAMU kick-off meeting scheduled for May 4 th , and technical inspection to begin the week of May 16 th .	No data submittal	No problems encountered	50%
Water Treatment Plant	METG	The HDS water treatment plant operated for five days during the week of April 24.	DMR for March 2011 submitted to MDEQ and EPA.	No problems encountered	100%
Flood Planning Control	METG	Concrete block barriers placed as a temporary day structure between Prickly Pear and Lower Lake in the event that Prickly Pear Creek overflows into Lower Lake during spring runoff.	No data submittal	No problems encountered	90%
Property Use/ Development	METG	<ol style="list-style-type: none"> 1. American Chemet draft lease of warehouse space. 2. Ashgrove loaded approximately 13,062 tons of slag in April (at \$3/ton = \$39,186). 3. Outside counsel preparing general Agricultural and Grazing Leases. 	No data submittal	No problems encountered	90%
Community & Local Meetings	METG	<ol style="list-style-type: none"> 1. Jim Ford participated in Lewis & Clark County Brownfields Task Force initial meeting. 2. LEAP & ICs meetings 3. East Helena City Council Meeting 	No data submittal	No problems encountered	-

SECTION 2. ACTIVITIES SCHEDULED FOR MAY 2011

Task	Performing Entity	Description
Groundwater Technical Work Group (TWG)	METG / GSI / CH2M-Hill	Groundwater Technical Group (TWG) Groundwater Model Work Plan review/discussion meeting scheduled for May 25 th , Helena, MT and conference call. The work group will include Burns, Breeden, Voss, Ford, Metish, Stimson, Mullen, and GSI. The meeting will include a discussion of the GW model parameters and the ongoing selenium investigation.
2 nd Quarter Field Sampling and Analysis Plan (FSAP)	Hydrometrics	Surface flow and stage collected along 22 PPC locations. SW flow/stage ponds/ditches at eleven (11) locations. Surface water level monitoring at 88 residential and monitoring wells.
Corrective Measures Study (CMS)	CH2M-Hill	CMS Kick-off meeting scheduled for May 5, 2011.
Property Use / Development	East Helena	<ol style="list-style-type: none"> 1. MBAC meeting with County and Governor's office on May 3, 2011. 2. Land Use Design Charrette scheduled for May 24, 2011.
Monthly inspections of six temporary cap areas	TS Consulting	Monthly inspections of the temporary cap areas will continue in May.
CAMU Inspections	TS Consulting	Monthly inspections of CAMU #1 and weekly inspections of CAMU #2 will continue in May 2011. The leachate and/or leak detection sumps did not require pumping in April.
CAMU #1 Technical Inspection	CH2M-Hill	Technical inspection and report at least every five years as required in the EPA-approved Design Analysis Plan for CAMU #1. CH2M-Hill to begin inspection the week of May 16 th .

Section 3. Describe and estimate the percentage of studies completed.

The following projects or studies are 100% complete:

- Pump and treat pilot scale testing for source area reduction of groundwater contamination;
- Jar testing (Phase I) of the East Helena PRB materials testing program;
- Slurry wall construction in the former acid plant sediment drying area;
- Interim capping project for the following areas:
 - former acid plant sediment drying area
 - dross area
 - sinter plant area
 - gas cleaning and contact sections of the acid plant
 - thaw house
 - blast furnace baghouse
 - blast furnace flue
 - Monier flue
 - sample mill
 - crushing mill
 - hopper pad
 - storage bins and gallery
 - acid dust facility
 - sinter stocking building
 - highline railroad
 - abandoned and new breaking floor buildings
 - groundwater sump
 - sinter plant, acid plant, and blast furnace baghouse stacks.
- January 2008 CAMU Phase 2 Cell Design Analyses, CAMU Phase 2 cell construction, and placement of 2008 and 2009 wastes within the CAMU Phase 2 cell;
- Slurry wall construction in the former speiss-dross plant area;
- Historic recordation tasks associated with the 2008 and 2009 Cleaning and Demolition Work Plans;
- 2008 Interim Measures Work Plan Addendum, Blast Furnace Flue and Monier Flue Cleaning and Demolition and Demolition Footprint Exposed Areas Soil Sampling obligations;

- Submittal of the draft Baseline Ecological Risk Assessment Work Plan (June 2009) and Field Sampling and Analysis Plan (FSAP);
- Submittal of the draft Human Health Risk Assessment Work Plan (October 2009);
- Submittal of the draft Phase II RCRA Facility Investigation Site Characterization Work Plan (September 2009);
- Submittal of the final Phase II RCRA Facility Investigation Site Characterization Work Plan (May 2010);
- Submittal of the 2010 Post RI/FS Groundwater and Surface Water Sampling and Analysis Plan (May 2010);
- Submittal of the Phase II RCRA Facility Investigation Field Sampling and Analysis Plan (June 2010);
- Submittal of the Project Management Plan (June 2010); and
- Submittal of the Borehole Abandonment Plan (June 2010)

Section 5. Describe actions being taken to address problems.

The delay in the Phase II RFI is attributed to inconsistencies in the database provided to GSI and increased efforts to meet deadline. The project was stopped temporarily to assess and re-direct resources to accomplish the task.

Section 6. Identify changes in key personnel during the period.

Kitty Cerauli, Administrative Assistant, was hired through AtoZ Personnel on April 25, 2011.

Section 7. Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.

The Custodial Trust received funds for Environmental Actions earmarked for site clean-up in connection with the ASARCO bankruptcy settlement. The Custodial Trust deposited the funds in a segregated East Helena Clean-up account and is investing and managing the funds in accordance with the provisions of the Settlement Agreement. Issues related to the CAMU trust are stilling being resolved between the beneficiaries and ASARCO.

Please do not hesitate to contact me if you have any questions.



Alicia C. Voss
Lead Project Manager
Montana Environmental Trust Group
Trustee of the Montana Environmental Custodial Trust

Attachments

cc: Denise Kirkpatrick—MDEQ
Randy Breeden—EPA 8
Chuck Figur—EPA 8

CERTIFICATION
PURSUANT TO U.S. v ASARCO INCORPORATED
(CV-98-3-H-CCL, USDC, D. Montana)

"I certify under penalty of law that this document and all attachments, were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."



Alicia C. Voss
Lead Project Manager
Montana Environmental Trust Group, LLC.
Trustee of the Montana Environmental Custodial Trust